UNITED STATES
v.
BEDROCK MINING CO., INC.,

IBLA 70-27 Decided September 23, 1970

Mining Claims: Common Varieties of Minerals -- Mining Claims: Discovery

Mining claims located for deposits of decomposed granite and building stone are properly declared null and void where the evidence supports a finding that the deposits are common varieties of stone located after July 23, 1955.

Mining Claims: Common Varieties of Minerals

The fact that a deposit of an otherwise common granite stone has a location closer to the market than others does not make it an "uncommon variety" as location is not a unique property inherent in the deposit but is only an extrinsic factor.

IBLA 70-27 : Riverside Contest 04871-B

UNITED STATES	:	Placer mining claims
v.	:	declared null and void
BEDROCK MINING CO., INC., NORMAN E. RUDOLPH PATRICIA E. RUDOLPH PHILIP W. PETER & LYNN PETER	:	Affirmed

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

The Bedrock Mining Co., Inc., Norman E. Rudolph, Patricia E. Rudolph, Philip W. Peter, and Lynn Peter have appealed to the Secretary of the Interior from a decision dated January 16, 1969, of the Office of Appeals and Hearings, Bureau of Land Management, which affirmed a decision of a hearing examiner declaring 14 placer mining claims null and void.

The claims, named the Breakwater, Breakwater 2 through 6, Flintstone and Flintstone 2 through 9, are situated in secs. 31 and 32, T. 6 S., R. 6 W., and sec. 1, T. 7 S., R. 6 W., S.B.M., California, within the Cleveland National Forest. They were all located on December 15, 1962, by the Peters and Rudolphs. Beginning approximately on the line between Orange and Riverside County, where the Ortega Highway crosses the county line, they cover a roughly rectangular block running some 2 1/2 miles to the west and varying between 1/2 mile and a mile north and south, encompassing 1120 acres. The location notices stated that the claims contained a massive outcropping of granite which is valuable for building stone in breakwaters, back fill and other commercial uses and that the material constituted a valuable discovery of building stone pursuant to the Building Stone Act, 30 U.S.C. § 161 (1964)

Contest proceedings against the claims were initiated at the request of the Forest Service, United States Department of Agriculture.

At the hearing, the contestee's witness also testified that the claims were valuable for decomposed granite.

The hearing examiner held that, while building stone was a locatable mineral deposit under the mining laws, section 3 of the act of July 23, 1955, 30 U.S.C. § 611 (1964), had amended the mining laws by removing from the category of locatable minerals common varieties of sand, stone, gravel, and several other materials. Mining claims, he went on, located after July 23, 1955, for building stone are valid only if the stone is not a "common variety." He concluded that the stone was a "common variety," that

consequently it was not subject to location under the mining laws at the time the claims were initiated, and he held that the claims were null and void. 1/

On appeal to the Director, the contestees contended that the building stone was not a common variety because it was nearer to and could be shipped to a harbor construction project at a lower transportation cost than the source from which the stone used there was obtained and that material from the claim was marketable because it could also be used on a nearby freeway construction project.

The Office of Appeals and Hearings affirmed the hearing examiner, holding that the granite stone was a common variety, and the fact that it could be delivered to a construction site at less cost than the stone being used there, and, therefore, was marketable, did not remove it from that category.

On appeal to the Secretary the contestee's reiterate their contentions that the building stone is not a "common variety" because of its advantage in transportation costs to market over other similar material, and that there is no other similar material unless it is assumed that cost is not a factor. They also urge that building stone is still a locatable mineral despite the act of July 23, 1955.

The decisions below have set out in detail the evidence presented at the hearing and it need not be repeated here except as it is pertinent to the discussions of a particular issue.

We note first that appellants have made no assertion that the decomposed granite on the claim is unique or that it has uncommon properties. It is therefore not a locatable mineral and cannot validate a claim located after July 23, 1955. United States v. Amos D. and Lena S. Robinette, A-31113 (March 4, 1970); United States v. Alice A. & Carrie H. Boyle, 76 I.D. 61, 318 (Supp.) (1969).

Next, contestees' earlier assertion that building stone is not a material affected by the act of July 23, 1955, is plainly erroneous. The court in Coleman v. United States 390 U.S. 599 (1968), explicitly held that building stone is one of the materials covered by the act of July 23, 1955, (supra), and is subject to location thereafter only if it is not a "common variety". United States v. Frank and Wanita Melluzzo et al., 76 I.D. 181 (1969); United States v. Charles Pfizer & Co., 76 I.D. 331, 336, 337 (1969). It is not enough, therefore, that a deposit of ordinary stone located after July 23, 1955, be sufficiently valuable to satisfy the prudent man test as refined by the marketability test. Id.

1/ The hearing examiner also noted that a portion of the lands embraced in the claims were withdrawn by P.L.O. 3134 dated July 30, 1963, effective as of December 16, 1958, 28 F.R. 7976. The P.L.O. closed the land it covered to mineral location.

The final issue, then, is whether the granite stone is a deposit which is valuable because it has some property giving it a special and distinct value.

We note first that there are other sources of supply for stone of this nature. There are quarries at other sites on the mainland and on Catalina Island (Tr. 42, 43, 44, 65). 2/ The deposit itself is the northern limit of a large deposit running some distance to the south (Tr. 26-28, 40, 41, 99). In fact the government witness testified (Tr. 28), and the hearing examiner held, that the stone is the country rock of the area. 3/

The only characteristic the contestees attribute to the stone to distinguish it from other deposits which can be used for the same purposes is that it is nearer to the market. They say that proximity to market will result in savings of 20%, and that this potential savings gives it a "unique and special value." 4/

The Department has considered a similar contention in several recent cases. It has rejected it and held that a deposit can not be determined to be an uncommon variety solely on the basis of its location, even though the location gives the deposit an economic advantage due to its proximity to market. United States v. Mt. Pinos Development Corp., 75 I.D. 320 (1968); United States v. Frank and Wanita Melluzzo, 76 I.D. 160, 169 (1969); United States v. Amos D. Robinette et al., A-31036 (March 4, 1970).

2/ This and similar references are to the pages of the transcript of the hearing held before the hearing examiner on March 11, 1966.

3/ The Department affirmed a similar conclusion in a prior case involving mining claims covering some of the same land. United States v. Laura Duvall and Clifford F. Russell, 65 I.D. 458, 461-462 (1958). The holding in the Duvall case, involving as it does a different locator, is not binding on the present appellants. See Union Oil Company of California et al., 71 I.D. 169, 185 (1964); 72 I.D. 313 (1965). For further proceedings involving these decisions see U.S. Department of the Interior, Office of the Solicitor, Index Digest (1969) LXIII.

4/ For a full discussion of the criteria pertinent to determining whether or not a material is a common variety, see United States v. U.S. Minerals Development Corporation, 75 I.D. 127, 133-135 (1968).

Convenience to market is not to be equated with rarity. When deposits of a particular mineral material occur commonly, certain of such deposits are sure to be located more advantageously with reference to the market than are others, but this fact does not make the deposits so situated any less common. As the Department held in Melluzzo, supra,

> "The act of July 23, 1955, supra, states that 'common varieties' do not include deposits of sand, gravel, etc. which are valuable 'because the deposit has some property giving it a distinct and special value' (italics added). This suggests that a special physical property must inhere in the deposit itself and that factors extrinsic to the deposit are not to be determinative. Location is such an extrinsic factor. We are not aware of any sound basis for gleaning a Congressional intent to make a deposit an uncommon or common variety depending on whether it is located within or outside of a market area or even whether it is located in a particular part of a market area." 76 I.D. 160, 168 (1969). 5/

It concluded then that the granite deposit is also a common variety of stone which has not been subject to location since July 23, 1955, or more specifically was not subject to location on December 15, 1962, the date the contested locations were made.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the Bureau of Land Management is affirmed.

_____
Martin Ritvo, Member

I concur: I concur:

_____ _____
Francis Mayhue, Member Edward W. Stuebing, Member

5/ For a discussion of the effect of the economics of extraction on the concept of "common varieties", see United States v. Charles Pfizer & Co. Inc., 76 I.D. 331, 346 (1969).